



“legal issues pertaining to entitlement” and not the “issues pertaining to remedy” that were set forth in the Motion to Enforce. The Court also stated that only legal issues pertaining to entitlement would be considered in the initial motion for summary judgment.

At the Court’s direction, the United States and Tribes filed a statement identifying the following specific issue to be decided at this stage of the proceeding:

Whether, under the facts set forth in the Motion for Enforcement of Fort Hall Indian Water Rights Consent Decree, and the Memorandum in Support and accompanying affidavits, the Shoshone-Bannock Tribes and the United States are entitled to an equitable adjustment as provided for in the decree of water right no. 27-11375.x.d.?

As pled, this issue requires not only a legal interpretation of the relevant Consent Decree provisions dealing with the equitable adjustment and the mechanism for satisfying Tribal water right 27-11375, but also a factual determination of whether the conditions exist that would require an equitable adjustment of the Tribes’ right, namely whether the 45,000 acre foot estimate has been or will be exceeded. This is a factual issue that remains in dispute, as there is no way of knowing how much water is diverted from the Blackfoot River by the non-Indian water users described in 27-11375.x.d. until those water rights have been positively identified. The State’s Motion for Accounting and the recent response to that motion by the Committee of Nine, attempt to definitively identify those water rights that benefit from the subordination protection of 27-11375.x.d. and therefore should be included in the calculation of the total diversions. Until the list of protected rights is finished, the parties cannot know whether the 45,000 acre foot estimate was more or less than the actual cumulative diversion under SRBA decrees. Even once that number is known, it will fluctuate from year to year depending on weather and water

supply. Consequently, it cannot be foreseen, at this time, whether, in any given year, the 45,000 acre feet will be exceeded.

Because this is a factual issue that is beyond the scope of issues to be addressed in the initial round of summary judgment and because there is no way of resolving the factual question until a definitive list of rights is established, the State's Response will be limited to the legal interpretation of equitable adjustment provisions of the Consent Decree.<sup>1</sup>

### Legal Standards

In enforcing the terms of a consent decree, a court applies the principles of contract law. *Nehmer v. United States Dept. of Veterans Affairs*, 494 F. 3d 846, 856 (9<sup>th</sup> Cir. 2007). A contract must be construed according to the plain language used by the parties. *McCallum v. Campbell-Simpson Motor Co.*, 82 Idaho 160, 349 P.2d 986 (1960). "The interpretation of a contract begins with the language of the contract itself." *Independence Lead Mines Co. v. Hecla Mining Co.*, 143 Idaho 22, 26, 137 P.3d 409, 413 (2006). When the language of a contract is clear, the meaning of that contract and the intent of the parties must be determined from the plain meaning of the contract's own words. *Wood v. Simonson*, 108 Idaho 699, 701 P.2d 319 (Ct.App.1985); *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 361, 93 P.3d 685, 692 (2004) (if the language of the contract is unambiguous, then its meaning and legal effect must be determined from its words). So long as the language of the contract is unambiguous, extrinsic evidence is not admissible to prove the intent of the parties. *Jones v. Mountain States Telephone and Telegraph Co.*, 105 Idaho 520, 670 P.2d 1305 (Ct.App.1983).

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<sup>1</sup> The State does not admit the factual allegations in the Motion to Enforce, nor does it waive the right to contest the factual allegations in the Motion to Enforce in a subsequent proceeding.

### Argument

**A. The Fort Hall Consent Decree expressly provides that an equitable adjustment to the Tribes' rights resulting from non-Indian water diversions in excess of 45,000 acre feet will be accomplished through the use of storage water, and, if necessary, groundwater.**

The negotiators of the 1990 Fort Hall Agreement had to confront the tension between two competing settlement objectives. On the one hand, the parties agreed to recognize a tribal natural flow water right of 150,000 acre feet from the Blackfoot River. On the other hand, the parties had also agreed to protect the water rights of all non-Indian water users diverting prior to January 1, 1990. The parties recognized the likelihood that in certain years, the natural flow of the Blackfoot River would not be sufficient to satisfy both objectives. In anticipation of this, the parties fashioned a solution that called for the Tribes to subordinate their natural flow water right to existing non-Indian water users in exchange for the right to satisfy the tribal natural flow water right in times of shortage with storage from the Blackfoot Reservoir and Grays Lake, and in the event these sources were insufficient, the balance of the 27-11375 right would be satisfied with groundwater.

The equitable adjustment to the Tribes' right is well described in provisions x.a and x.d of water right no. 27-11375. Provision x.a provides that, if after the exercise of the non-Indian water users' full entitlement to water under their rights, there is not enough natural flow water to provide the Tribes with their full entitlement of 150,000 AFY under right no. 27-11375, the Tribes may use their storage water rights in Blackfoot Reservoir and Grays Lake. Provision x.f allows for the diversion of groundwater under this right, if natural flow, together with the storage rights mentioned in x.a, is not sufficient to provide the full 150,000 AFY. This ensures that both the non-Indian water users and the Tribes receive their full entitlement of water under their water rights

decreed in the SRBA. It also provides the flexibility necessary to manage these conflicting demands whether the water supply is scarce or plentiful.

In an effort to understand the impact of the subordination of the Tribe's right to non-Indian water rights, the parties tried to estimate the total annual diversion under non-Indian rights. The resulting figure of 45,000 AFY was an estimate, as described in the Consent Decree. It was not a cap on the amount of water that could be diverted under non-Indian rights—these water right holders were assured that they would continue to receive their full legal entitlement under state law.

The parties were aware that this subordination provision would mean that, at times, there would not be sufficient water to satisfy the Tribes' Blackfoot natural flow water right. This is why the parties created a mechanism for the Tribes to satisfy any unfilled portion of the natural flow right with storage water and groundwater. If anything, the 45,000 AFY is to be used as an indication that such supplemental sources should be tapped. As described by the Tribes in their testimony to the Idaho State Senate Committee on Resources and Environment in 1991:

Thus, when the natural flow of the Blackfoot River is insufficient to meet both Indian and non-Indian demands, the Tribes will switch to diverting their storage in the Blackfoot Reservoir and Grays Lake while non-Indians will continue to use the remaining available natural flow until it runs out.<sup>2</sup>

Once the management principles of the Blackfoot River Management Plan are fully implemented, it will be possible for the watermaster to determine if and when the non-Indian water users will exceed the estimated diversion of 45,000 acre-feet, at which point the Tribes may turn to storage or groundwater to fill their right. This is the

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<sup>2</sup> Exhibit 1 to Affidavit of Shasta Kilminster-Hadley, Testimony of the Shoshone-Bannock Tribes Re: HB258, at 23, March 20, 1991 (emphasis added).

equitable adjustment intended by the parties to the Fort Hall Agreement and described in the provisions of the Fort Hall Consent Decree.

- a. **The Fort Hall Consent Decree protects users of Blackfoot River natural flow diverting water prior to January 1, 1990 to their full legal entitlement under state law, regardless of their total cumulative annual diversion.**

The Fort Hall Consent Decree mirrors the language of the Fort Hall Agreement with regard to Tribal water right no. 27-11375, a water right for the natural surface flows of the Blackfoot River with a priority date of 1867. Provision x.d of the water right states:

The Tribes and the United States shall exercise this water right in a manner that ensures persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive their full legal entitlement under state law. The parties will specifically enumerate all rights protected by this provision once the SRBA Decree for this basin becomes final. These state created water rights are estimated to divert not more than 45,000 AFY of water from the Blackfoot River. In the event this estimate of the amount of existing diversion under state created water rights is exceeded as a result of the Decree in the SRBA, the parties shall negotiate an equitable adjustment to the Tribal water rights to account for this change.<sup>3</sup>

This language reflects the intent of the parties to the Fort Hall Agreement to subordinate the senior Tribal water right to all junior non-Indian users diverting water prior to January 1, 1990. The language is clear and unambiguous—these non-Indian water users are to be protected from the Tribes’ water right to their “full legal entitlement.” When the language of a contract is clear, the meaning of that contract and the intent of the parties must be determined from the plain meaning of the contract’s own words. *Wood v. Simonson*, 108 Idaho 699, 701 P.2d 319 (Ct.App.1985). A contract must be construed according to the

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<sup>3</sup> This language is found in provision 27-11375.x.d. of the Fort Hall Consent Decree, entered by this Court in 1995, and in Article 7 of the Fort Hall Agreement (emphasis added).

plain language used by the parties. *McCallum v. Campbell-Simpson Motor Co.*, 82 Idaho 160, 349 P.2d 986 (1960).

Despite the clear language of this provision, many have paraphrased it to imply that there is a 45,000 acre foot per year cap on diversions by non-Indian water users. As noted above, this estimate was made simply to predict the impact of the subordination to junior non-Indian water rights on the Tribes' ability to divert the full 150,000 AFY under water right no. 27-11375. It was to be used to determine when the Tribes might need to turn to the other sources of water available to fill this right—namely, storage water and groundwater. There can be no confusion as to the clear language of the provision, however, either in the Consent Decree or the Agreement itself: non-Indian water users are to continue to receive the full legal entitlement under state law. The language of the Consent Decree is clear and unambiguous, therefore, there is no need for this Court to look beyond the four corners of the document itself to determine the intent of the parties.

Even if the Court were to find the provision ambiguous, the representations made by parties to the Fort Hall Agreement corroborate this interpretation of the language cited above. First and foremost, the immutable principle for the State's participation in all reserved water rights negotiations was that any agreement had to protect existing water rights. The Idaho Water Resource Board made this condition clear when it approved the 1990 Fort Hall Indian Water Rights Agreement by stating in its resolution that the Agreement was "consistent with the Board's established policy that any negotiated agreement must provide for the protection of existing water uses..."<sup>4</sup> Additionally, representations by the parties during and after the signing of the Fort Hall Agreement

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<sup>4</sup> Kilminster-Hadley Aff., Exhibit 2, "Resolution No. \_\_\_", Idaho Water Resource Board, at 3, June 14, 1990.

consistently state that non-Indian water users diverting prior to January 1, 1990 would continue to receive their full entitlement under state created rights.

In a 1989 letter to the Blackfoot River Watermaster, detailing the ongoing negotiations between the parties, Deputy Attorney General Clive Strong stated,

The Blackfoot water right would be characterized as a federal reserved water right with an 1867 priority date; however, the Tribes would recognize all existing state-created water rights in the Blackfoot River basin as senior to the Tribes' right. Thus, as a practical matter, even though the Tribes would be advancing the priority date of their existing Blackfoot water right, *there would be no change in the way the rights are currently delivered.*"<sup>5</sup>

On March 12, 1990, the Committee of Nine passed Resolution 16, which explicitly supported the principles of the negotiated settlement agreement on the basis of an attached "Accord" reached by the Tribes, the United States, the State and water users in September, 1989. The Accord includes the following typed notation: "*hold harmless non-Indian Blackfoot users to present diversion; if short on Blackfoot, go to reservation groundwater.*"<sup>6</sup>

In a statement to the United States Senate, in support of a bill to approve the "1990 Fort Hall Indian Water Rights Agreement," Senator Jim McClure described the Agreement's impact on interaction between the Tribes' rights and non-Indian water users as follows:

The Agreement contains several provisions to ensure that the *Tribal water rights will not adversely affect historic nonIndian water rights* from sources other than the Snake River. First the Agreement provides that the existing nonIndian water users in the Blackfoot River basin, whose rights are decreed in the Snake River Basin Adjudication (SRBA), will be entitled to continue diverting the natural flow of the Blackfoot. . . .The

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<sup>5</sup> Kilminster-Hadley Aff., Exhibit 3, Letter from Clive Strong to Ed Hall, dated Sept. 8, 1989, at 2 (emphasis added).

<sup>6</sup> Kilminster-Hadley Aff., Exhibit 4, Exhibit A to Resolution 16 of the Committee of Nine, dated March 12, 1990 (emphasis added).

Agreement provides a process that ensures the delivery of water to Indian and nonIndians alike while giving due respect to the sovereignty of each party.<sup>7</sup>

The Executive Summary of the Fort Hall Agreement, in describing the main points of the Agreement, states that the Tribes' rights include: "150,000 AFY from the Blackfoot River, Blackfoot Reservoir and Grays Lake. *This right is subordinated to protect existing non-Indian water users on the Blackfoot* and to provide 22,000 AFY for non-Indian Fort Hall Indian Irrigation Project water users."<sup>8</sup> The Summary also states: "On the Blackfoot River, *water rights will be delivered as they have been in the past 100 years.*"<sup>9</sup> Finally, in testimony to the Idaho State Senate Committee on Resources and Environment in 1991, the Tribes themselves stated as follows: "[t]o assure that all water users receive their *full entitlement*, the parties have developed a plan to account for and segregate storage rights from natural flow in order to effectuate this arrangement."<sup>10</sup>

These statements all evidence the intent of the parties to the Agreement to protect the full legal entitlement of non-Indian water users diverting under state created rights prior to January 1, 1990. None of the above referenced statements even mention 45,000 AFY, evidencing the understanding that non-Indian water users on the Blackfoot were to enjoy the protection of the historic entitlement of their water rights from the senior Tribal right. The 45,000 AFY estimate was used simply to understand the expected extent of the non-Indian water rights and to thereby determine the potential water supply available to satisfy the Tribes' right to divert 150,000 AFY under right no. 27-11375. If the

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<sup>7</sup> Kilminster-Hadley Aff., Exhibit 5, Statement of Senator McClure before the United States Senate, July 18, 1990, at 1-2 (emphasis added).

<sup>8</sup> Kilminster-Hadley Aff., Exhibit 6, Executive Summary, The Fort Hall Indian Water Rights Agreement, at 2 (emphasis added).

<sup>9</sup> *Id.* at 3 (emphasis added).

<sup>10</sup> Kilminster-Hadley Aff., Exhibit 1, Testimony of the Shoshone-Bannock Tribes Re HB258, March 20, 1991, at 23 (emphasis added).

estimate were exceeded, it was anticipated that the Tribes would need to use the other sources described in 27-11375.x.a and x.f (storage from Blackfoot Reservoir and Grays Lake, and groundwater, respectively) to fill their entitlement to 150,000 AFY of water under the right.

The implication that there is a 45,000 acre foot cap on how much water non-Indian water users are entitled to divert is refuted by the plain language of the Consent Decree and the Agreement. Furthermore, statements made by parties to the Agreement, both before and after it was signed, support this reading of the provision. The State therefore asks this Court to find that the Tribes' Blackfoot water right is subordinate to non-Indian water rights diverting prior to January 1, 1990 to their full legal entitlement.<sup>11</sup>

**b. Pursuant to the plain language of the Fort Hall Consent Decree, the equitable adjustment contemplated by the parties to the Fort Hall Agreement is the ability of the Tribes to use storage and groundwater to satisfy their total entitlement under the Winters right.**

The provisions governing Tribal right no. 27-11375 in the Fort Hall Consent Decree set forth a multi-faceted, flexible process whereby the Tribes are able to divert the full amount of water permitted under the right, while ensuring that the non-Indian water users diverting prior to January 1, 1990 continue to receive their full legal entitlement as well. Provision 27-11375.x.a states:

If the natural flow of the Blackfoot River is not sufficient to satisfy this right and other rights to divert Blackfoot River natural flow pursuant to state law, the Tribes may satisfy this Winters right by using the other rights described in Articles 7.1.19 and 7.1.20, provided that the combined use in satisfaction of this Winters right shall not exceed 150,000 AFY.

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<sup>11</sup> The State's Motion for Accounting and the recent response to that motion by the Committee of Nine, attempt to definitively identify which water rights diverted natural flow from the Blackfoot River prior to January 1, 1990 and therefore receive the benefit of the subordination protection of 27-11375.x.d.

The rights described in Articles 7.1.19 and 7.1.20 are the Tribes' storage rights in Blackfoot Reservoir and Grays Lake, respectively. Provision 27-11375 x.f provides a third source of water under the right as follows:

If the water supplied under this right and the other rights described in Articles 7.1.19 and 7.1.20 does not provide 150,000 AFY under the terms of this Agreement, the Tribes may divert groundwater within the Reservation under this right, exclusive of the water rights described in Article 7.2, such that the combined water supply from the other rights described in Articles 7.1.19 and 7.1.20 and surface and groundwater under this right yields 150,000 AFY.

These provisions, taken together with the subordination provision, 27-11375.x.d, provide a well-conceived process for ensuring that the Tribes' Blackfoot right no. 27-11375 is satisfied. Although the Tribes' right is subordinated to non-Indian water users' rights diverting Blackfoot River natural flow prior to January 1, 1990, to the extent that these diversions prevent the Tribes from diverting the full 150,000 from natural flow, the Tribes have the right to use storage water, and if need be, groundwater to fill the right. These alternative sources provide the Tribes with an assurance that the non-Indian use would not preclude the Tribes' prevent the Tribes from diverting their full legal entitlement. It also provided the Tribes with the flexibility to manage the resource effectively during water shortages.

These provisions are in both the 1990 Fort Hall Agreement and the 1995 Fort Hall Consent Decree. Both provisions provide remedies to the Tribes should the non-Indian water users divert water such that the Tribes' cannot fill their right with Blackfoot natural flow alone. Despite this assurance of an adequate water supply, the Tribes and the United States profess "strong fears...the Tribes would not receive their fair share of

Blackfoot River water.” The plain language of the Consent Decree, however, renders such fears moot.

The Consent Decree provides for three sources of additional water, the Blackfoot Reservoir, Grays Lake, and reservation groundwater, in the event that the Blackfoot River flows are not enough to fill both the non-Indian water users’ rights and the Tribes’ entitlement to divert up to 150,000 AFY of water from the Blackfoot River basin. To contend, as Dr. Mesghinna does in his Affidavit in Support of the Motion to Enforce, that equitable adjustment means that “the Tribes will be provided an additional water supply at their existing points of diversion along the Blackfoot River in an amount equal to what has been diverted by the non-Indian Basin 27 water users in excess of 45,000 acre-feet per year,<sup>12</sup>” would render those provisions meaningless.

There is nothing in the record to support the contention that the parties to the Consent Decree envisioned that the Tribes would be entitled to demand more water in the Blackfoot, in addition to the three secondary sources explicitly described in the Consent Decree. Indeed, the plain language of the provisions themselves belies this argument:

Provision 27-11375 x.a. “If the natural flow of the Blackfoot River is not sufficient to satisfy this right and other rights to divert Blackfoot River natural flow pursuant to state law, the Tribes may satisfy this Winters right by using the other rights described in Articles 7.1.19 and 7.1.20...”

Provision 27-11375 x.f. “If the water supplied under this right and the other rights described in Articles 7.1.19 and 7.1.20 does not provide 150,000 AFY under the terms of this Agreement, the Tribes may divert groundwater within the Reservation under this right...”

“The interpretation of a contract begins with the language of the contract itself.”

*Independence Lead Mines Co. v. Hecla Mining Co.*, 143 Idaho 22, 26, 137 P.3d 409, 413 (2006). The plain language of these provisions of the Consent Decree clearly

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<sup>12</sup> Mesghinna Aff., ¶ 11.

demonstrates that the Tribes' entitlement to water under water right 27-11375 was assured, not through a requirement that non-Indian water users only use a certain amount of water, but through the availability of alternative water sources.

This language is clear and unambiguous, and as such, requires no extrinsic evidence of the parties' intent when negotiating these provisions. Nevertheless, representations made by the parties support this reading of the Consent Decree. For instance, the Accord reached by the Tribes, the United States, the State and water users in September, 1989, included the following statement: "hold harmless non-Indian Blackfoot users to present diversion; *if short on Blackfoot, go to reservation groundwater.*"<sup>13</sup> An earlier version of this Accord, entitled "Tribes Response to State/W/U Proposal (09-01-89)" contains the exact same language.<sup>14</sup> In his Statement to Congress, Senator McClure stated:

In times when the natural flow of the Blackfoot is insufficient to fill the water rights of the Tribes and the nonIndian water users, *the Tribes have agreed to cease use of the natural flow of the Blackfoot and to instead use their storage water entitlement from the Blackfoot Reservoir to fill their 150,000 Winters water right from the Blackfoot River basin.*<sup>15</sup>

Finally, in testimony to the Idaho State Senate Committee on Resources and Environment in 1991, the Tribes themselves stated as follows:

The agreed-upon process provides for both the Tribes and other Blackfoot River water users to divert available natural flows of the Blackfoot River. When natural flows are insufficient to satisfy both Indian and non-Indian natural flow water rights, *the Tribes will satisfy the balance of their natural flow rights by diverting water stored in the Blackfoot Reservoir under Article 7.1.19 of the Agreement and/or diverting water stored in Grays Lake under Article 7.1.20.*

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<sup>13</sup>Kilminster-Hadley Aff., Exhibit 4, Exhibit A to Resolution 16 of the Committee of Nine, dated March 12, 1990 (emphasis added).

<sup>14</sup> See Kilminster-Hadley Aff., Exhibit 7, Tribes' Response to State/W/U Proposal, at 1 (09-01-89).

<sup>15</sup> Kilminster-Hadley Aff., Exhibit 5, Statement of Senator McClure before the United States Senate, July 18, 1990, at 1-2 (emphasis added).

*In addition, the Tribes may supplement these back-up storage rights by developing the capability to divert groundwater, provided the combined diversion does not exceed the total 150,000 AFY diversion right under the Winters Doctrine.*

*Thus, when the natural flow of the Blackfoot River is insufficient to meet both Indian and non-Indian demands, the Tribes will switch to diverting their storage in the Blackfoot Reservoir and Grays Lake while non-Indians will continue to use the remaining available natural flow until it runs out.<sup>16</sup>*

This statement by the Tribes clearly demonstrates their understanding that non-Indian water users would divert to the full extent of their rights, and that the Tribes would turn to other sources of water if it appeared that there was insufficient natural flow in the Blackfoot to satisfy both non-Indian and Tribal rights.

These representations support the plain language of the Agreement and the Consent Decree, and underscore the fact that the parties understood what the provisions meant at the time. The State therefore asks this Court to find that, pursuant to the plain language of the Fort Hall Consent Decree, the equitable adjustment contemplated by the parties to the Fort Hall Agreement is the ability of the Tribes to use storage and groundwater to satisfy their total entitlement to 150,000 AFY under right no. 27-11375.

### **Conclusion**

The terms of the Consent Decree negotiated by the parties to the Fort Hall Agreement were carefully drafted to ensure that both the non-Indian water users diverting Blackfoot River natural flow prior to January 1, 1990 and the Shoshone-Bannock Tribes would receive their full entitlements. The means of doing so was the subordination of Tribal right 27-11375 to non-Indian water rights in use prior to January 1, 1990, and the provision of additional water from storage and groundwater to satisfy the Tribes' right to

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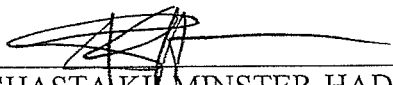
<sup>16</sup> Kilminster-Hadley Aff., Exhibit 1, Testimony of the Shoshone-Bannock Tribes Re HB258, March 20, 1991, at 23 (emphasis added).

150,000 AFY. The State therefore asks this Court to find that, pursuant to the plain language of the Fort Hall Consent Decree, 1) water right no. 27-11375 is subordinate to non-Indian water rights diverting Blackfoot River natural flow prior to January 1, 1990, to the full legal extent of the rights, 2) the 45,000 AFY estimate does not represent a cap on the ability of non-Indian water users to divert Blackfoot River natural flow, and 3) that the equitable adjustment contemplated by the provision 27-11375.x.d is the Tribes' ability to satisfy any unfilled portion of water right no. 27-11375 with water from Blackfoot Reservoir and/or Grays Lake, and if necessary, reservation groundwater.

Respectfully submitted this 1<sup>st</sup> day of April, 2011.

LAWRENCE WASDEN  
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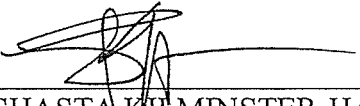
## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1<sup>st</sup> day of April 2011, I caused a true and correct copy of the foregoing **STATE OF IDAHO'S RESPONSE TO THE UNITED STATES' AND SHOSHONE-BANNOCK TRIBES' MOTION TO ENFORCE THE FORT HALL CONSENT DECREE** to be filed with the Court and served on the following parties by the indicated methods:

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| <u>Original:</u><br><br>Clerk of the District Court<br>Snake River Basin Adjudication<br>P.O. Box 2707<br>253 Third Avenue North<br>Twin Falls, Idaho 83303-2707       | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Certified Mail, Return Receipt Requested<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile:     |
| <u>Copies:</u><br><br>Shoshone-Bannock Tribes<br>Represented by: Jeanette Wolfley<br>Special Counsel<br>Shoshone-Bannock Tribe<br>202 N. Arthur<br>Pocatello, ID 83202 | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Certified Mail, Return Receipt Requested<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile:     |
| Committee of Nine<br>Represented by John K. Simpson<br>1010 W. Jefferson, Ste 102<br>PO Box 2139<br>Boise, ID 83701-2139                                               | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Certified Mail, Return Receipt Requested<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile:     |
| Patrick J. Taney<br>Represented by: Scott E. Axline<br>PO Box 100<br>Blackfoot, ID 83221                                                                               | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Certified Mail, Return Receipt Requested<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile:     |
| State of Idaho<br>Office of Attorney General<br>PO Box 44449<br>Boise, ID 83711-4449                                                                                   | <input type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Certified Mail, Return Receipt Requested<br><input type="checkbox"/> Overnight Mail<br><input checked="" type="checkbox"/> Not Applicable |

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| <p>U.S.A.<br/> Represented by:<br/> United States Dept of Justice<br/> Environment &amp; Natural Resource<br/> 550 West Fort Street, MSC 033<br/> Boise, ID 83724</p> | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Certified Mail, Return Receipt Requested<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile: |
| <p>FMC Production LLC<br/> Represented by: William G. Myers III<br/> 101 S. Capitol Blvd. Ste 1400<br/> PO Box 2527<br/> Boise, ID 83701-2527</p>                     | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Certified Mail, Return Receipt Requested<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile: |
| <p>Eastern Idaho Water Co.<br/> Attn: Larry Hinderager<br/> 434 W. Riverton Rd<br/> Blackfoot, ID 83221</p>                                                           | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Certified Mail, Return Receipt Requested<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile: |
| <p>U.S. Department of Justice<br/> Attn: Peter C. Monson<br/> Indian Resources Section<br/> 999 18<sup>th</sup> St.<br/> Denver, CO 80202</p>                         | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Certified Mail, Return Receipt Requested<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile: |
| <p>Director of IDWR<br/> PO Box 83720<br/> Boise, ID 83720-0098</p>                                                                                                   | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Certified Mail, Return Receipt Requested<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile: |
| <p>Mark B. Pratt<br/> 279 N. 400 E.<br/> Blackfoot, ID 83221</p>                                                                                                      | <input checked="" type="checkbox"/> U.S. Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> Certified Mail, Return Receipt Requested<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Facsimile: |

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|--------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Brett McDaniel<br/>631 W. 225 S.<br/>Blackfoot, ID 83221</p>          | <p><input checked="" type="checkbox"/> U.S. Mail<br/> <input type="checkbox"/> Hand Delivery<br/> <input type="checkbox"/> Certified Mail, Return Receipt Requested<br/> <input type="checkbox"/> Overnight Mail<br/> <input type="checkbox"/> Facsimile:</p> |
| <p>Gary &amp; Sonja Wright<br/>673 W. 300 S.<br/>Blackfoot, ID 83221</p> | <p><input checked="" type="checkbox"/> U.S. Mail<br/> <input type="checkbox"/> Hand Delivery<br/> <input type="checkbox"/> Certified Mail, Return Receipt Requested<br/> <input type="checkbox"/> Overnight Mail<br/> <input type="checkbox"/> Facsimile:</p> |
| <p>Marvin R. Yancey<br/>691 W. 300 S.<br/>Blackfoot, ID 83221</p>        | <p><input checked="" type="checkbox"/> U.S. Mail<br/> <input type="checkbox"/> Hand Delivery<br/> <input type="checkbox"/> Certified Mail, Return Receipt Requested<br/> <input type="checkbox"/> Overnight Mail<br/> <input type="checkbox"/> Facsimile:</p> |
| <p>Merlin Yancey<br/>707 W. 300 S.<br/>Blackfoot, ID 83221</p>           | <p><input checked="" type="checkbox"/> U.S. Mail<br/> <input type="checkbox"/> Hand Delivery<br/> <input type="checkbox"/> Certified Mail, Return Receipt Requested<br/> <input type="checkbox"/> Overnight Mail<br/> <input type="checkbox"/> Facsimile:</p> |

  
 SHASTA KILMINSTER-HADLEY